No. 85-413

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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

IRA BLACKWOOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's convictions for extortion in violation of the Hobbs Act, 18 U.S.C. 1951.

2. Whether the district court abused its discretion in admitting evidence under Fed. R. Evid. 404(b).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 768 F.2d 131.

JURISDICTION

The judgment of the court of appeals was entered on July 11, 1985. The petition for a writ of certiorari was filed on September 6, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on one count of racketeering, in violation of 18 U.S.C. 1962(c), and ten counts of extortion, in violation of the Hobbs Act, 18 U.S.C. 1951. He was sentenced to concurrent terms of seven years' imprisonment on the racketeering count and one of the extortion counts, to be followed

by concurrent terms of five years' probation on the remaining extortion counts, and fined $20,000 on the racketeering count. The court of appeals affirmed.

1. The evidence at trial showed that petitioner, a Chicago police officer, was assigned as secretary of the police department's Traffic Court Unit in 1974. In 1983, petitioner became a court sergeant. The charges against petitioner stemmed from his acceptance of bribes to influence judicial decisions. His misconduct was discovered during the Federal Bureau of Investigation's "Operation Greylord" undercover investigation into corruption in the Cook County Circuit Court. In cooperation with the FBI, Judge Brocton Lockwood posed as a corruptible judge. Petitioner told Lockwood that the judge could make enough money by accepting payoffs to "retire within two years" and that petitioner had "enough clout" with the system to help him obtain the illegal payments (Tr. 532). See Pet. App. 2a.

In 1981 Lockwood introduced petitioner to FBI Agent Ries, who was posing as a defense attorney. Ries subsequently paid petitioner a total of $4,400 to influence judicial decisions in ten misdemeanor cases. These bribes formed the basis for the indictment. Pet. App. 2a-3a. Ries testified at trial that he believed that petitioner, " 'by virtue of his position in the traffic court section and as a court sergeant, and by virtue of the knowledge and experience gained from that position, and by virtue of the people he knew, * * * had the ability to influence the disposition of cases heard in Cook County Circuit Court' " (*id.* at 5a-6a). In each of the ten cases charged in the indictment, petitioner was able to arrange a favorable outcome.

2. The court of appeals affirmed (Pet. App. 1a-14a). After reviewing the extensive trial testimony (*id.* at 5a-7a), the court held that the evidence was sufficient to support petitioner's convictions for extortion in violation of the

Hobbs Act because the jury could have concluded that "Agent Ries reasonably believed that [petitioner] had the power, through his official position and the connections and contacts it gave him to the personnel, workings, and records of the Circuit Court, to influence the judicial decisions in the cases for which [petitioner] received bribes" (*id.* at 7a). The court of appeals also held that the district court did not abuse its discretion in admitting Lockwood's testimony that petitioner had boasted of his history of influence with the court system (*id.* at 10a-12a).

ARGUMENT

1. Petitioner argues (Pet. 5-9) that the evidence was insufficient to support his extortion convictions.[1] He contends that the Hobbs Act, which proscribes the obtaining of property "under color of official right," requires proof that his victim reasonably believed that petitioner had the *official* authority to affect the disposition of cases rather than merely the de facto power to do so by virtue of his official position. Petitioner's argument misapprehends the gravamen of a Hobbs Act violation, and there is no conflict among the circuits. Further review is therefore unwarranted.[2]

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[1]Petitioner was sentenced on the Hobbs Act counts only to probation and to a term of imprisonment concurrent with that on the racketeering count (Pet. App. 1a-2a). Petitioner does not challenge the sufficiency of the evidence supporting his racketeering conviction.

[2]The view of the Hobbs Act now advanced by petitioner is different from that set forth, without his objection, by the district court in its instructions, which the court of appeals ruled were not plainly erroneous. See Pet. App. 9a; Tr. 960-967. (Petitioner objected to one of the instructions merely as a matter of form. See Tr. 1007; see also U.S. C.A. Br. 26 n.30.) The district court instructed the jury that petitioner " 'need not control the result promised so long as the extorted party possesse[d] a reasonable belief in [petitioner's] power to obtain the results' " (Pet. App. 9a, quoting Tr. 999). To similar effect, the district court stated that the government need prove only that it was reasonable to believe that petitioner " 'had power to obtain favorable results' " (Pet. App. 8a,

Although a public official must "use * * * his office to obtain money not due him or his office" to violate the Hobbs Act (Pet. App. 3a), there is no requirement in the statutory language that the defendant have promised to perform an act within (or reasonably thought to be within) the de jure authority of that office.[3] Rather, the lower courts have consistently ruled that the offense is proven where the victim "held, and defendant exploited, a reasonable belief that the * * * system so operated that the power *in fact* of defendant's office included the effective authority to" confer the benefits for which payments were made. *United States* v. *Mazzei*, 521 F.2d 639, 643 (3d Cir.) (en banc), cert. denied, 423 U.S. 1014 (1975) (emphasis added). See also, *e.g.*, *United States* v. *Bibby*, 752 F.2d 1116, 1127-1128 (6th Cir. 1985) (although defendant lacked legal authority over the benefit in question, his influence on the ultimate decisionmakers was "sufficient to create a reasonable inference that he could deliver the goods"), petitions for cert. pending, Nos. 84-1692 and 84-1851; *United States* v. *Rindone*, 631 F.2d 491, 495 (7th Cir. 1980) ("[*d*]*e jure* ability to perform the promised act need not be present"). In view of petitioner's well-placed position in the county court system, his knowledge of that system, his contacts with its judges and other court personnel, his representations to Agent Ries, and the successful outcomes he achieved, it is beyond

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quoting Tr. 998) and that the offense "does not require that the services to be performed be related to [petitioner's] actual duties" (Tr. 999). Petitioner does not contend that the evidence is insufficient to show that he did in fact enjoy the power to affect the outcome of cases; indeed, he obtained a favorable resolution in each of the cases that formed the basis for the indictment.

[3]Petitioner's reading of the statute would immunize every official except the ultimate decisionmakers (here the judges) even though functionaries such as petitioner were intimately involved in and profited from the same pattern of corruption by virtue of their own public offices. This is simply not the law, nor should it be.

peradventure that petitioner in fact possessed the ability to affect the disposition of cases, which is more than sufficient to sustain his convictions.

Petitioner's claim of a conflict among the circuits (Pet. 7-9) is unfounded. *United States* v. *Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), cert. denied, 439 U.S. 1116 (1979), is the only case relied on by petitioner in which the defendant's conviction was reversed.[4] The court there, however, followed the same rule as did the court of appeals here: "The official need not control the function in question if the extorted party possesses a reasonable belief in the official's powers." 583 F.2d at 1027, citing, inter alia, *United States* v. *Mazzei, supra,* and *United States* v. *Braasch*, 505 F.2d 139 (7th Cir. 1974), cert. denied, 421 U.S. 910 (1975); see also Pet. App. 3a-4a. No such reasonable belief was proven in *Rabbitt* because there was no evidence that the defendant's influence affected the award of state contracts (583 F.2d at 1028). As already recounted, there was ample evidence of the extent of petitioner's influence here.

2. Petitioner also argues (Pet. 10-12) that the district court abused its discretion in admitting certain evidence under Fed. R. Evid. 404(b). This factbound contention was correctly rejected after being carefully considered by the court of appeals (Pet. App. 10a-12a), and it merits no further review.

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[4]In *United States* v. *Mazzei*, 521 F.2d at 643-644, the court rejected an argument almost identical to that made by petitioner in holding that the defendant state senator's lack of statutory power over the awarding of state leases did not take his conduct outside of the Hobbs Act. In *United States* v. *Brown*, 540 F.2d 364, 372 (8th Cir. 1976), the court followed *Mazzei* in stating that the defendant need not by virtue of his office have de jure authority over the benefits in question. In *United States* v. *Scacchetti*, 668 F.2d 643 (2d Cir.), cert. denied, 457 U.S. 1132 (1982), the defendant was a judge who misused his legal authority to affect the disposition of cases. The court did not address facts such as those presented here nor did it suggest that the misuse of actual, as opposed to legal, authority would not violate the statute.

The evidence in question was Judge Lockwood's testimony that petitioner had told him that " 'he had a lot of clout within the system' " and was " 'trusted' " because he had " 'kept his mouth shut' " about troubles in the court system several years earlier (Pet. App. 11a). Agent Ries was aware of this statement. It was properly admitted under Fed. R. Evid. 404(b) solely to help show that Ries harbored a reasonable belief in petitioner's influence in the court system, the principal controverted issue at trial (see Pet. App. 5a, 11a). The statement was not hearsay because it was admitted to show Ries' state of mind, not "the truth of the matter asserted" (Fed. R. Evid. 801(c)). Nor did the district court abuse its discretion under Fed. R. Evid. 403, which permits the exclusion of evidence where "its probative value is substantially outweighed by the danger of unfair prejudice." The evidence went to a central issue at trial; a limiting instruction was given; and the statement did not admit affirmative misconduct on the part of petitioner so much as his " 'knowing and not telling' " of the misdeeds of others (Pet. App. 12a). Accordingly, the evidence was properly admitted. See generally, *e.g.*, *United States* v. *Burchinal*, 657 F.2d 985, 993 (8th Cir. 1981); *United States* v. *Beechum*, 582 F.2d 898, 916-918 & n.23 (5th Cir. 1978) (en banc), cert. denied, 440 U.S. 920 (1979).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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